**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**FIRST APPEAL No. 2040 of 1983**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE M.R. SHAH**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**GUJARAT UNIVERSITY - Appellant(s)**
**Versus**
**SOLANKI BHAILALBHAI SAVABHAI - Defendant(s)**

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**Appearance :**
MRS VD NANAVATI for Appellant(s) : 1,
RULE SERVED for Defendant(s) : 1,

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**CORAM : HONOURABLE MR.JUSTICE M.R. SHAH**

**Date : 01/08/2006**

**ORAL JUDGMENT**

The appellant, original-defendant [hereinafter referred to as 'defendant'], has preferred the present Appeal challenging the

judgment and decree passed by the learned Judge, City Civil Court at Ahmedabad, dated 28th February 1978 in Civil Suit No. 443 of 1979 in decreeing the said Suit and directing the defendant to pay Rs. 5,500 towards damages.

2. The plaintiff filed the Civil Suit No. 443 of 1979 in the City Civil Court at Ahmedabad for a declaration that the order dated 28th February 1978 is illegal, null and void and not binding to him, and for a decree of Rs. 10,600/-. The plaintiff, Son of a farm labourer belonging to backward class joined Swami Vivekanand Arts College in Ahmedabad; started attending Pre-Arts studies; passed his examination in Pre-Arts in the month of March/April 1976; and thereafter continued his studies in S.Y.B.A., by keeping Economics as a special subject and History as a subsidiary subject. It was averred in the Plaint that in all the internal tests taken by the College the plaintiff passed through the same.

He appeared in the examination of F.Y.B.A., in March 1987 conducted by the defendant University. His Seat Number was 3939 and in view of the questions answered in the said examination, he was confident that he would definitely be declared successful in the said examination. But when the result of the said examination was declared on 27th July 1977 he was declared unsuccessful in the said examination. It was further alleged that he was not willing to accept the result of the said examination. He became very upset on hearing of the result in examination and therefore he applied for reexamination of 2 papers qua marks obtained thereon on 2nd August 1977 by paying Rs. 15 as fees for the same, and as per the ordinance, rules and the special rules of the Gujarat University, he was entitled to have reexamination of the papers and therefore he applied for the same. It was further averred that on reexamination, if a mistake was found in the

result, the same was required to be corrected, the applicant was required to be informed immediately, and the entire process of reexamination of the papers and giving intimation to the student concerned about the result of the same was required to be completed within a maximum period of 15 days because after the reexamination the possibility of declaring the student as passed was there and if on reexamination the result is changed and a student is declared passed, then in that case he may get admission immediately and student's precious year is not wasted. It was further averred in the Plaint that when he submitted the application on 2nd August 1977 for reexamination he was informed that reexamination of his papers will be completed within short period and he would be informed accordingly. It was further averred that at interval of every 15 days he used to meet the responsible officers of the defendant including the Chancellor and requested them to

dispose of the application for reexamination of the marks and inspite of that the application of the plaintiff was not disposed of even within the period of 5 months and 8 days which showed carelessness and negligence on the part of the University in not taking a final decision within a reasonable time and because of such act the University was liable for all the consequences arising therefrom. It was further averred that by communication/letter and notification dated 10th January 1978 he was informed by the defendant that in Economics subject in place of 49 marks he got 53 marks, and in place of total marks of 258 he got 262 marks and his result was accordingly corrected. It was further alleged that he was entitled to attend both the terms and if the defendant had taken proper care, he would not have been declared failed and one of the important academic years would not have been spoiled and he would have continued his studies in S.Y.B.A. It was further averred that after he

received letter dated 10th January 1978 he met the Chancellor of the University and requested to grant his terms for S.Y.B.A., as the mistake in the result was due to the carelessness and negligence on the part of the University, i.e. the failure of the defendant University to make necessary amendments within the reasonable time in his result which was necessary with a view to see that his one year may not be spoiled and therefore he requested to sanction the term of S.Y.B.A., and he may be permitted to further study. It was further averred that initially, after the aforesaid representation the Chancellor agreed for the same and he waited for 7 to 8 days for the reply but as no reply was received he gave an application dated 21st January 1978 to grant his term for S.Y.B.A., and allow him to be admitted in the S.Y.B.A. Course, but the Chancellor replied to him by informing him that as the 1st term of F.Y.B.A., was over and 3-4 periods of the 2nd term were over, he cannot be

given admission in the class of S.Y.B.A. It was contended that the said decision, communicated vide letter dated 8th February 1978 was illegal and null and void and therefore the present suit was filed. It was further averred that while examining the FY B.A. examination papers of the plaintiff there was negligence on the part of the examiner of the University and also for reexamination of the marks there was a delay on the part of the University and because of the action of the University declaring the result of reexamination by taking such a long period and the failure of the University in reexamining the marks within a reasonable time and by not communicating the result of reexamination within reasonable time he lost one precious year and therefore he has prayed for compensation/damages to the extent of Rs. 10,600/-. It is required to be noted that initially the plaintiff prayed for a decree for an amount of Rs. 10,600, however, subsequently the suit was amended and the amount

of compensation claimed was reduced to between Rs. 5000 and 6000. As there was carelessness and negligence on the part of the University in not carrying out the reexamination within reasonable time and by which he lost his precious one year and he has passed his graduation one year late, and therefore he requested to decree the suit.

3. The Suit was resisted by the defendant by filing Written Statement at Exh. 12. The defendant denied all the allegations being careless and negligent and the right of the plaintiff to claim any damages on account of the alleged act. It was submitted that all efforts were made to reassess the marks and the answer books of F.Y.B.A. at the earliest. It was also further submitted that as the plaintiff was offered to appear in S.Y.B.A., as an external student which the plaintiff did not accept the claim of damages on the ground that he has last his one year is not sustainable and therefore it

was requested to dismiss the Suit. The plaintiff was himself examined at Exh. 23. He examined one Chhanabhai Karsanbhai at Exh. 45. The defendant University examined one K.R. Joshi,Superintendent in the Examination Department of the defendant stated to be an Assistant Registrar in the Examination Section of the University at Exh. 47. The defendant also examined one Jayantilal Gordhandas Shah at Exh. 50. Documentary evidences were also produced consisting of the correspondence entered into between the parties for filing the suit, receipt for reassessment etc., On appreciation of evidence, oral as well as documentary, the learned Trial Court held that the plaintiff proved that reassessment was not done within a reasonable time from the date of application for reassessment and that the plaintiff lost his precious one year by not reassessing the answer papers/marks at the earliest and not communicating the result of such reassessment and therefore the learned Trial

Court decreed the suit for an amount of Rs. 5,500/= with interest. Being aggrieved and dissatisfied with the same, the original-defendant has preferred the present Appeal.

4. Mrs. Nanavati, learned advocate appearing on behalf of the appellant University has made only one submission that in view of the fact that the plaintiff was offered to appear in S.Y.B.A. Examination as an external student which the plaintiff did not avail, there was no question of payment of any damages for loss of one year. It is further submitted by him that there was no carelessness or negligence on the part of the University in not reassessing the answer papers/marks at the earliest and therefore the learned Trial Judge has committed an error in passing the decree for damages for an amount of Rs. 5,500/- with interest.

5. It is not in dispute that the plaintiff appeared in F.Y.B.A. Examination conducted by the respondent University in the month of March 1977. It is also not in dispute that when his result was declared, he was declared 'failed' and it is also not in dispute that he applied for reexamination of two answer papers on 2nd August 1987 by paying Rs. 15 as fees for the same. It is also not in dispute that on reexamination of the papers there was a change in the marks in the subject of Economics and in place of 49 marks, he got 53 marks and in place of total marks of 258, he got 262 marks and as a result thereof he was permitted to fill-in the terms in S.Y.B.A., and he was getting A.T.K.T. It is required to be noted that such a decision of increasing in marks on reassessment was communicated to the plaintiff on 10th January 1978 accompanied by a notification. It is required to be noted that the examination of S.Y.B.A. started in the month of March 1978 and therefore there was hardly 2 ot

3 months left when he was informed with regard to change in the marks on reassessment/reexamination of the papers. Some where at the end of January or beginning of February 1978 he was informed that he can appear in S.Y.B.A., as an external student which was not accepted by the plaintiff by submitting that it was not possible for him to prepare himself for appearing in S.Y.B.A. Considering the aforesaid facts, it appears that it took 5 months for the University to reexamine the papers. If the reexamination would have been taken at the earliest and/or he would have been communicated the outcome of the reassessment/reexamination at the earliest,then he could have saved his one year, but because of the fact that reexamination was done after a period of 5 months, and he was communicated the outcome of the change in marks on reexamination after a period of 5 ½ months it is disputed that the plaintiff lost one year. For whatever be the reason, the delay has occurred in reexamining the

marks. The fact remains, that the plaintiff lost his precious one year, otherwise he would have got admission in S.Y.B.A. on the basis of his ATKT. But for the fact that the change was communicated only in the month of January 1978 and by then as much time had elapsed he could not get admission in S.Y.B.A. Under the circumstances, the learned Trial Judge is justified in awarding the damages. It is required to be noted that the original claim was Rs. 10,600, however, subsequently the same was amended and it was reduced to between 5000 and 6000 rupees and accordingly the learned Trial Judge passed a decree for Rs. 5,500. In fact, according to this Court, the amount of Rs. 5,500/- is on a lower side for loss of one precious year of a student, but as the claim of the original-plaintiff is for an amount between Rs. 5,000-Rs.6000/- and that there are no cross-objections, and the plaintiff is satisfied with the amount of Rs. 5,500/-, this Court is not

considering any other thing. No illegality has been committed by the learned trial Judge in awarding the damages to a student for loss of one precious year.

6. For the reasons stated above, there is no substance in the Appeal and the same is required to be dismissed and it is dismissed. Interim relief, if any, stands vacated forthwith. No order as to costs.

*[ M.R. Shah, J. ]*

*RMR.*